

U.S. App. No. 09/854,764Attv. Docket No.: 155-01RECEIVED
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OCT 06 2006

II. REMARKS

This reply is fully responsive to the Office Action dated April 6, 2006, and is filed within six - (6) months following the mailing date of the Final Office Action. A request for a Three Month Extension of Time to October 6, 2006 is enclosed herewith in addition to the credit card payment form to cover the fees therefor.

A. Response to Claim Objections 24, 25, 39, and 40:

The Applicant has amended the claims as suggested by the Examiner as indicated above to make the claims consistent with the parent claim.

B. Arguments Regarding Claims 1-18

The Office Action rejected claims 1 - 18 under 35 U.S.C 103(a) as being unpatentable over Viney in view of Tyler.

1. Viney is Not Combinable with Tyler Because Viney is a Nonanalogous Art

The Examiner's use of Viney is not within the field of Applicant's endeavor and is therefore nonanalogous art. Viney relates to a *nonmovable* surveying device fixed on a tripod. Surveying is the science of accurately determining the position of fixed points and the distances between them associated with positions on the surface of the earth, which are used to establish land boundaries for ownership or governmental purposes. Inherent in the art of surveying is a nonmovable "total station" in order acquire measurements with precision. ("In operation, the user generally aligns the total station at a target held by a second user." See Viney Column 1, lines 16-17). Applicant's device, on the contrary, relates to an imaging system having an independently controlled imaging platform placed on a *moveable* support vehicle such as a helicopter contemplated to be used in the field of entertainment to capture difficult pictures. (See Applicant's Abstract

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and Field of Invention). Further, the Tyler reference is also distinct from surveying devices, and contemplates a device attached to a "helicopter or other transporting vehicle." (See Tyler Abstract). The prior art cited by Tyler refers to devices attached to movable apparatus such as helicopters, there are no references to surveying devices or anything similar, i.e. nonmovable. ("Although the invention has broad application to the stabilization of practically any instrument carried by a vehicle, it has particular utility in stabilizing a helicopter mounted camera system for filming motion pictures." (See Tyler Column 1, lines 11-14)). As such Viney is not reasonably pertinent to the particular problem with which Applicant is involved, i.e. capturing difficult pictures from a movable platform such as a helicopter. Precise definition of the problem is important in determining whether a reference is from a nonanalogous art. Defining the problem too broadly, as done here by the Examiner, may result in considering prior art as 'analogous' which is inconsistent with real world considerations. See *Panduit Corp. v. Dennison Mfg. Co.*, 774 F.2d 1082, 227 USPQ 337 (Fed. Cir. 1985), vacated, 475 U.S. 8098 229 USPQ 478 (1986) 8 aff'd on remand, 810 F.2d 1561, 1 USPQ2d 1593 (Fed. Cir. 1987).

Therefore, the Viney reference constitutes nonanalogous art and should therefore be not available as a reference in evaluating the obviousness of Applicant's claimed invention under 35 USC 103.

2. Viney and Tyler Do Not Contain Any Justification To Support Their Combination, Much Less In The Manner Proposed

With regard to the proposed combination of Viney and Tyler, it is well known that in order for any prior art-references themselves to be validly combined for use in a prior-art 103 rejection, the references themselves (or some other prior art) must suggest that they combined, e.g. as was stated in *In re Sernaker* 217 U.S.P.Q. 1, 6 (C.A.F.C. 1983):

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“[P]rior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantages to be derived from combining their teaching.”

As discussed above, the use of Viney is improper as it is a nonanalogous art. However, even assuming if the references were combined, the proposed combination would not show all of the novel physical features of claim 1. This is so, because Tyler is very distinct from Applicant's invention. Tyler relates to a *gyroscopically* stabilized apparatus. The mere fact that Tyler uses a gyroscope means that a remote control cannot be used, because movement caused by a gyroscope is automatic and does not require a user to control the movements of a camera or imaging device:

“Inasmuch as the camera hemisphere moves with the camera platform, the camera window is always aligned with the camera lens. There is therefore no need to provide complex servomechanism or window position sensors to insure such alignment.” (See Tyler, Column 2, lines 34-39).

Therefore there is specifically no motivation in Tyler to combine a remote control imaging system with an imaging platform that is capable of controllable motion about three orthogonal axis. because of the nature of a gyroscope, a remote user to control the movements of the camera is not required. Furthermore, the platform of Viney is already stable on a tripod. Thus, it is not understood why at the time the invention was made, one with ordinary skill in the art would have been motivated to include a movable imaging platform that is capable of controllable motion about three orthogonal axis, as purportedly taught by Tyler, in the remote control imaging system, as purportedly disclosed by Viney, as a means “to provide a gyroscopically stable imaging platform with a greater degree movement.”

As stated in MPEP 706.02(j), to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in

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the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claimed limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F. 2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (Emphasis added). Accordingly, those skilled in the art would not look to the Tyler patent to modify the device in Viney to provide or meet the claimed limitations of claims 1.

Therefore, the Applicant respectfully requests withdrawal of the rejection of claim 1 under 35 USC 103 because neither Viney nor Tyler nor Viney in view of Tyler render as obvious the claimed limitations for the aforementioned reasons. Further, since claims 2 - 18 depend from the above claim 1 and incorporate all of its limitations, they are patentable for the same reasons given with respect to claim 1. Therefore, Applicant respectfully submits that claims 1 - 18 are allowable over the cited reference and solicits reconsideration and allowance of these claims.

Dependent Claim 15:

Applicant respectfully submits that Viney, Tyler, and Viney in view of Tyler clearly lack the claimed limitations of claim 15, which recite, inter alia, "...wherein the video display further comprises: a television tuner."

In relation to this particular claim, the Final Office Action states, "...Viney et al. disclose a video display (20); however, Viney do not disclose wherein the video display (20) comprises a television tuner. **Official Notice** is taken that both the concept and advantage of providing a video display comprising a television tuner are well-known and expected in the art as means to provide entertainment to the remote control operator when the imaging device is not in use."

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It is respectfully submitted that a surveyor would not use surveying equipment for entertainment when it is not in use. Surveying equipment, such as those taught by Viney, are designed or made for a very specific and highly technical field, and are in no way made to be used for entertainment. In particular, the surveyors themselves would not use such highly specialized equipment for mere entertainment when this highly technical equipment is not in use.

As was stated above, surveying is the science of accurately determining the position of fixed points and the distances between them associated with positions on the surface of the earth, which are used to establish land boundaries for ownership or governmental purposes. A television tuner would not be well-known nor would it be expected in the art of surveying to provide for entertainment when this highly technical equipment is not in use. With the surveying equipment, one may determine angles and distances from the instrument to some fixed points to be surveyed, and not be expected to be entertained by this equipment. With the aid of trigonometry, the angles and distances may be used to calculate the coordinates of actual positions (northing, easting and elevation) of surveyed points, or the position of the instrument from known points, in absolute terms. Clearly, neither the art of surveying nor the equipment used within this art is about entertainment.

MPEP 2144.03 states that Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known (in this case, well-known in the art of surveying, which relates to modification of the Viney reference). As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable

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demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

Furthermore, MPEP 2144.03 states if the facts are not well-known, i.e., not capable of instant and unquestionable demonstration as being well-known, then Official Notice of such facts is inappropriate without citation to a prior art reference. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art (in this case, the pertinent art is the art of surveying, which relates to modification of the Viney reference by the assertion of the Official Notice). *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

Regarding the Applicant's application, the technology taught is highly technical as it relates to the field of remote controls and remote control feedback systems that use a very complex, miniaturized gyroscopically stabilizing platform for movement of a complex imaging system, in three orthogonal axis, requiring highly skilled engineering, photography, and pilot-operator personnel. The Viney reference is also related to a highly technical field, requiring highly trained personal and highly technical equipment. As stated above, if no evidence is provided, then there is no support for an obviousness rejection. See *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings **will not support an obviousness rejection**).

The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge, showing both the concept and advantage of providing a video display comprising a television tuner that are well-known and expected in the art (of surveying, where Viney

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is used, modified by the Official Notice, and Applied against claim 15) as means to provide entertainment to the remote control operator (the person who works as a surveyor) when the imaging device is not in use. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter (...a television tuner...) as subject to Official Notice and be allowed to challenge the assertion in the next reply after the Office Action in which the common knowledge statement was made.

Lastly, if such assertions by the Official Notice in the Office Action is based on facts within the personal knowledge of the Examiner, it is respectfully requested that an affidavit from the Examiner be provided to Applicant, stating specifically the facts that support such assertions that show as common knowledge in the art of surveying the claimed "... *video display further comprises: a television tuner.*" That is, the affidavit from the Examiner must show both the concept and advantage of providing a video display comprising a television tuner that are well-known and expected in the art (of **surveying**, where Viney is used, modified by the Official Notice, and Applied against claim 15) as means to provide entertainment to the remote control operator (the person who works as a surveyor) when the imaging device is not in use.

Dependent claims 30 and 45:

Applicant respectfully submits that Viney, Tyler, or Viney in view of Tyler clearly lack the claimed limitations of claims 30 and 45, which recite, inter alia, "...*wherein the video display further comprises: a television tuner.*"

The claims 30 and 45 uses language similar to claim 15. The same arguments above as applied to claim 15 can also be applied to claims 30 and 45. Accordingly, the Applicant respectfully requests withdrawal of the rejection of claims 30 and 45 under 35 USC 103 because neither Viney nor Tyler nor Viney in view of Tyler renders as obvious the claimed limitations for the aforementioned reasons. Hence, the Applicant

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respectfully submits that claims 30 and 45 are allowable over the cited references and solicit reconsideration and allowance of these claims.

C. Arguments Regarding Claims 19-48

The Office Action rejected claims 19 – 29, 31 – 44, and 46 – 48 under 35 U.S.C. 102(b) as being anticipated by Viney et al. (US 6,034,722), hereinafter referred to as "Viney."

Viney Does Not Anticipate Independent Claim 19:

The newly amended claim 19 recites:

"A remote control device comprising:

a video display for displaying the output of an imaging device;

one or more imaging platform motion controls to permit motion of the imaging platform in three orthogonal axes;

*at least one of iris, zoom, and focus controller for the imaging device; and
a camera control handle having one or more camera functions."*

The Office Action states, "[f]or **Claim 19**, Viney et al. disclose, as shown in figures 1 – 4 and as stated in columns 2 (lines 66 and 67), 3 (lines 16 – 29, 43 – 45, and 56 – 58), 4 (lines 10 – 23 and 63 – 67), and 6 (lines 28 – 32, 44 – 48, and 55 – 60), a remote control (3) comprising:

a video display (20) for displaying the output of an imaging device (11);

one or more imaging platform motion controls (any one or combination of aiming 31, focus 32, trigger 33 and/or alphanumeric 34);

at least one of iris, zoom, and focus controller (32) for imaging device;

and

a control handle (aiming control 31) having one or more camera functions"

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Applicant has amended claim 19 to include: "*one or more imaging platform motion controls to permit motion of the imaging platform in three orthogonal axes...*" Adding this limitation clarifies that motion of the imaging platform occurs in "three orthogonal axes" is a limitation not found within Viney. Therefore, Claim 19 can no longer be anticipated by Viney under 35 U.S.C. 102(b).

Even though the above amendment to Claim 19 obviates the 102(b) rejection, Applicant also makes the following argument as well. Applicant places great emphasis that the "...camera control handle having one or more camera functions ..." of Claim 19, is not at all similar to the aiming control 31 of Viney. Viney discloses a rather simple device that has a camera situated on what is called the total station (1) as can be seen in Fig. 1 of Viney. As clearly stated in Column 5, lines 58-61 of Viney, the "aiming control" only controls the movement of the total station and not the camera independently or the specific functions of the camera: "[t]he aiming control 31....allows the user to manually command movement of the total station." (Emphasis added). This is very much distinguished from the camera control handle in Applicant's invention which is much more complex as it permits "control [of the] main system functions in addition to or in lieu of telecontrol unit 96 control." (See Paragraph [0047] of Applicant's Application). Furthermore, Applicant's Abstract clearly states that the camera control handle can control the "telecontrol zoom, iris, focus and camera on/off control..." Therefore, at the most, the aiming control of Viney can merely cause the *total station* to "rotate vertically and/or horizontally" (See Column 6, lines 46 of Viney), unlike in the Applicant's application, where the camera control is capable of several controlled movements and functioning movements (such as control of the zoom, iris, focus, etc.) of the camera itself.

Independent claim 19 has been amended to overcome the rejection of the prior

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Office Action based upon 35 USC § 102(b). Claim 19 has been amended to clarify the description of the invention and is presented above in a marked-up version herein in accordance with 37 CFR § 1.121.

In addition, since claims 20 – 29, 31 – 33 depend from the above claim 19 and incorporate all of its limitations, they are patentable for the same reasons given with respect to claim 19, and include additional limitations, which further distinguishes them from the reference cited. Therefore, Applicant respectfully submits that claims 20 – 29, 31 – 33 are also allowable over the cited reference and solicits reconsideration and allowance of these claims.

New matter as described in 35 USC § 132 has not been added to the specification. Accordingly, entry of these changes is hereby respectfully requested.

Independent Claim 34:

The newly amended claim 34 uses language similar to the newly amended claim 19. The same arguments above as applied to claim 19 can also be applied to claim 34. Therefore, Applicant respectfully submits that claim 34 is allowable over the cited reference and solicits reconsideration and allowance of this claim.

In addition, since claims 35 - 44 and 46 - 48 depend from the above claim 34 and incorporate all of its limitations, they are patentable for the same reasons given with respect to claim 34, and include additional limitations, which further distinguish them from the reference cited. Therefore, Applicant respectfully submits that claims 35 - 44 and 46 - 48 are also allowable over the cited reference and solicits reconsideration and allowance of these claims.

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V. CONCLUSION

It is respectfully submitted that the case is now in condition for allowance, and an early notification of the same is requested. If it is believed that a telephone interview will help further the prosecution of this case, Applicant respectfully requests that the undersigned be contacted at listed telephone number (310)288-4500.

Respectfully submitted,

October 5, 2006
Date

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence, including the materials listed above, for Application Serial No. 09/854,764, is being facsimile transmitted to the Patent and Trademark Office fax number 1-571-273-~~3000~~₈₃₀₀ on October 5, 2006.

Date: October 5, 2006

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